be continuous and I therefore set aside the order of the magistrate and remit the case to the magistrate for him to call on the defence.

Order accordingly.

PUBLIC PROSECUTOR v. LIM SWEE GUAN

[A.Cr.J. (Ong Hock Sim J.) August 16, 1968]
[Penang — Criminal Revision No. 5 of 1968]

Penal Code, s. 408 — Criminal breach of trust — Charge bad in law — Order of retrial — Criminal Procedure Code (Cap. 21), s. 163(2).

The accused was charged with criminal breach of trust an offence under section 408 of the Penal Code and convicted on his plea and sentenced to one year's imprisonment. It was later realised that the charge contravened section 163(2) of the Criminal Procedure Code because the time included between the first and last dates mentioned in the charge exceeded one year and therefore was bad in law. On revision,

Held: the accused should be retried before the same or another magistrate. This was not a proper case to follow *Cheah Yew Fatt* v. *Public Prosecutor* (1) and merely quash the conviction and leave it to the Public Prosecutor to act thereafter in his discretion having regard to sections 322 and 310 of the Criminal Procedure Code.

Cases referred to:—

(1) *Cheah Yew Fatt* v. *Public Prosecutor* [1960] M.L.J. xlvi.

(2) *Ahmad Shah bin Yasin* v. *Public Prosecutor* [1952] M.L.J. 28.

(3) *R.* v. *Tan Chu Chooi* [1938] M.L.J. 230.

CRIMINAL REVISION.

Abdul Razak bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong Hock Sim J.: This matter has come to me to be dealt with by way of revision. In this case, the accused had pleaded guilty to the following charge:—

"That you, between 9th March, 1965 and 20th November, 1967, at the United Malayan Banking Corporation Limited, Beach Street, Penang, in the District of Georgetown, in the State of Penang, being a servant in the employment of the said United Malayan Banking Corporation Limited, and in such manner entrusted with certain property, to wit, $165,000 cash, committed criminal breach of trust in respect of that property and thereby committed an offence punishable under section 408 of the Penal Code."

He was convicted on his own plea and sentenced to one year's imprisonment.

I need only refer to section 163(2) of the Criminal Procedure Code (S.S. Cap. 21) which reads:—

"When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 174; provided that the time included between the first and last of such dates shall not exceed one year."

It is clear that in the present instance, the charge is wrong and directly contravened an express statutory provision. This vitiated the trial which in effect is a nullity. In exercise of its revisionary powers under section 322 Criminal Procedure Code the court may exercise the powers under section 310 and, as in an appeal from a conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction or committed for trial. I do not think it proper for me in this case to follow *Cheah Yew Fatt* v. *Public Prosecutor* (1) and merely quash the conviction and leave it to the public prosecutor to act thereafter in his discretion having regard to sections 322 and 310. I accordingly direct that the accused be retried before the same or another president.

I would like to quote the observations of Mr. Justice Taylor in *Ahmad Shah bin Yassin* v *Public Prosecutor* (2) at page 29.

"While it is clearly the duty of those in charge of prosecutions to guard against misjoinder and other errors in charges, it is also the duty of presidents and magistrates to examine all charges critically before calling upon accused to plead and to rectify errors at the earliest opportunity."

The time to do this is at the same time when the accusation was made. *R.* v. *Tan Chu Chooi.* (3)

Noting the dates specified in the charge, it is clear that compliance with section 169(2) would necessitate the framing of three separate charges. In our Code, the joinder of the offences of the same kind to be tried at one trial is limited to three, committed within the space of twelve months while Singapore provides for any number of such offences to be tried together.

The conviction is set aside and retrial ordered.

Re-trial ordered.

SAINT ANDREW'S MISSION HOSPITAL v WAH HIN & CO. LTD. & ORS.

[A.C.J. (Kulasekaram J.) August 23, 1968]
[Singapore — District Court Appeal No. 1 of 1968]

Landlord and Tenant — Rent controlled premises — Statutory tenant — Notice to chief tenant — Existence of sub-tenants — Position of sub-tenants on termination of chief tenant's tenancy — Whether further notice required before proceedings can be commenced against sub-tenants — Control of Rent Ordinance (Cap. 242) ss. 17, 26, 27 & 28.

The appellant/plaintiff, landlord of a rent-controlled premises, let the premises to a tenant who in turn sublet a portion of it to a sub-tenant. The respondents

(3rd and 4th defendants in the original action) were in possession of the premises as tenants of the sub-tenant.

On February 28, 1967, the appellant terminated the contractual tenancy of the tenant, and then instituted proceedings for the recovery of possession of the premises against the tenant, sub-tenant and the respondents. The district court granted an order for possession as against the tenant, but it held that no such order could be made against the sub-tenant and the respondents on the ground that no notice had been given by the appellant to determine their tenancies. The appellant's ground of appeal was that the district court erred in law in holding that it was incumbent on the appellant to determine the tenancies of the second defendant and the respondents.

Held, allowing the appeal: the status of the respondents were analogous to that of statutory tenants. The appellant could therefore commence proceedings for the recovery of possession against them wiihout giving them any further notice to terminate their "tenancies."

Cases referred to:—

(1) *Guan Seng Kee Ltd.* v. *Buan Lee Seng Ltd.* [1954] M.L.J. 34, P.C.

(2) *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* [1964] M.L.J. 71.

DISTRICT COURT APPEAL.

J.B. Jeyaretnam for the appellant.

C. F. J. Ess for the 3rd respondent.

Syed Alwee bin Ahmad Alsree (Assistant Director of Legal Aid) for the 4th respondent.

Cur. Adv. Vult.

Kulasekaram J.: The plaintiff in this action is the owner of premises No. 256, Tanjong Pagar Road, Singapore which is a rent controlled premises in that the provisions of the Control of Rent Ordinance (Cap. 242) apply to them.

The first defendant is the tenant of the plaintiff of the whole of the said premises.

The second defendant is the sub-tenant of the first defendant of the whole of the first floor of the said premises but does not live on the said premises.

The third and fourth defendants are sub-tenants of the second defendant on the first floor of the said premises.

The plaintiff determined the first defendant's tenancy of the said premises on the 28th February, 1967 by a year's notice to quit dated the 22nd February, 1966. Notwithstanding that its tenancy has been determined the first defendant had refused to give up possession of the said premises.

The plaintiff alleges that it is not precluded from recovering possession of the said premises under the Control of Rent Ordinance as the plaintiff reasonably requires the said premises for occupation by itself and there has been no change in the ownership of the said premises within one year next preceding the date of the notice to quit. The plaintiff therefore claimed possession of the said premises as against all the defendants.

The first defendant opposed the claim for possession on the ground that so far as it concerned the first defendant greater hardship will be caused to the first defendant by granting the order for possession to the plaintiff than by refusing to grant it. The second defendant did not defend this action. The third and fourth defendants opposed this claim on the grounds that:—

(i) their respective sub-tenancies have not been determined by either the second defendant or the plaintiff.

(ii) if an order for possession is obtained against the second defendant that such order is not enforceable against them by virtue of section 26 of the Control of Rent Ordinance.

(iii) greater hardship would be caused to them by granting the order for possession to the plaintiff than by refusing to grant it.

The learned trial judge granted the order for possession as against the first defendant on his being satisfied that greater hardship would be caused to the plaintiff by refusing the claim as against the first defendant than by granting it.

As against the second, third and fourth defendants though the learned trial judge held that greater hardship would be caused to the plaintiff than to each of the second, third and fourth defendants by refusing its claim against each of them than by granting it he nevertheless dismissed the claim of the plaintiff as against the second, third and fourth defendants and with costs in respect only as against the third and fourth defendants on the ground that no notice had been given by the plaintiff to the said three defendants to determine each of their tenancies.

In this appeal the plaintiff is the appellant and it appeals against the order of the learned district judge dismissing its claim for possession against the second, third and fourth defendants, the respondents to this appeal.

There is one and only one ground of appeal in this case, namely, that the learned trial judge erred in law in holding that it was incumbent on the appellant to determine the tenancies of the second, third and fourth defendants by notice to quit before commencing proceedings against them.

Now the learned trial judge in his grounds of decision took the view that on the determination of the first defendant's tenancy on 28th February, 1967, the second, third and fourth defendants became statutory tenants. In so doing he appears to have followed the decision

of the Privy Council in *Guan Seng Kee Ltd.* v. *Buan Lee Seng Ltd.*[1] He said that this case —

"is authority for the proposition that at the end of expiry of the notice to quit to the chief tenant a sub-tenant lawfully remaining in occupation becomes a statutory tenant, holding as a tenant from the head landlord and enjoying the protection of the Ordinance".

He further said that in that case the question of whether a notice was required to determine the statutory tenancy was not gone into, the case having been decided on other considerations. He then considered the provisions of section 17 (2) and section 28(2) of the Ordinance and took the view that —

"In the present case, as a monthly tenancy appears to be indicated the 2nd, 3rd and 4th defendants should have been given a month's notice to quit at any time after the expiry of the one year's notice to quit served on the 1st defendants, because at that time they had become statutory tenants. To say that a notice to quit does not have to be served on sub-tenants because there is no contractual relationship between them and the landlord is to ignore the existence of a statute-created tenant. Alternatively, a year's notice could have been given to the sub-tenants at the same time that the 1st defendants were given notice, because at that time the sub-tenants had not become statutory tenants as yet and in my view they would require the same amount of notice as any tenant under section 15(1)(j) (Cap. 242).

As a pre-requisite to recovery of possession has not been fulfilled by the plaintiffs, the court cannot make any order for possession and the plaintiffs' claim against the 2nd, 3rd and 4th defendants consequently is dismissed, notwithstanding, so far as the 2nd defendant is concerned, that he has not appeared to make his defence."

At the hearing before the learned trial judge the parties had not referred him to the case of *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.*,[2] to which I shall refer later in this judgment.

For convenience let me first of all set out the relevant sections of the Control of Rent Ordinance applicable to this appeal:—

Section 17(2). Nothing in section 15 or 16 of this Ordinance shall be deemed to relieve a landlord from the necessity of determining the tenancy according to law.

Section 26(1). Where any order or judgment for the recovery of possession has been obtained against any tenant of premises, such order or judgment shall not be enforceable against any sub-tenant of such tenant unless the court is satisfied that such tenant was prohibited by the terms of his tenancy from sub-letting or that such sub-tenant has used the premises for illegal or immoral purposes. Every order or judgment for possession made against any tenant shall declare whether it shall be enforceable against any sub-tenant or not.

(2) Any sub-tenant against whom such judgment or order is not enforceable shall, if he remains in possession after notice of the judgment or order has been served on him, cease to be a sub-tenant of the tenant and become a statutory tenant of the landlord in respect of the premises comprised in his subtenancy.

Section 27. The following persons are statutory tenants under this Ordinance, namely:—

(a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord; and

(b) any sub-tenant becoming a statutory tenant under and by virtue of any of the provisions of this Ordinance.

Section 28. A statutory tenant shall hold the premises of the landlord upon the following terms and conditions, namely:—

(b) his tenancy shall be subject to be determined by such notice as would have been required by law to determine a monthly tenancy of the premises containing no express provision for determination; . . .

First it should be borne in mind that a statutory tenancy as provided by section 27 of the Ordinance is not really a tenancy as such. It is merely a status of irremovability conferred on a contractual tenant, when his contractual tenancy has been determined by the landlord, for his protection under certain circumstances.

At common law a landlord on the determination of his tenants' contractual tenancy would be entitled to possession. In the case of controlled premises to which the Control of Rent Ordinance applies the landlord on his determining his tenant's contractual tenancy would not by virtue of section 14 of the Ordinance be entitled to an order for possession except in the cases provided for by section 15 of the said Ordinance. When the landlord is not able to get possession then the provisions of section 27(a) of the Ordinance come into play and the tenant becomes a statutory tenant.

Again at common law on the landlord determining the tenancy of his tenant, the sub-tenant's rights to possession of the premises are automatically determined and the sub-tenant cannot validly resist the claim of the landlord for possession of the premises.

The question then arises as to whether the sub-tenant of a controlled premises gets any protection under the said Ordinance. Indeed he gets certain protection and that protection to my mind is given by the provision of section 26(1) of the Ordinance in that though the sub-tenant's rights have been determined yet the landlord who gets an order for possession against his tenant cannot enforce it against the sub-tenant of the premises except in the two cases mentioned therein namely —

(1) where the court is satisfied that the tenant was prohibited by the terms of his tenancy from sub-letting;

(2) where the court is satisfied that the sub-tenant has used the premises for illegal or immoral purposes.

In other words if a sub-tenant remains in possession of the premises or any part thereof, then he cannot be deprived of that possession by the landlord, merely by obtaining an order for possession against his chief tenant.

Now sub-section (2) of section 26 provides that if he remains in possession after notice of the judgment or order in respect of the tenant has been served on him then he (the sub-tenant) ceases to be a sub-tenant of the tenant and becomes a statutory tenant of the landlord. It should be observed that this sub-section does not confer any additional protection to the sub-tenant over and above what has been provided by sub-section (1) of section 26 but merely creates a relationship between him and the landlord whereby from then onwards he will have to pay the landlord the rent and enjoy exactly the same limited protection he had under sub-section (1) of section 26 of the Ordinance.

Now in the case where he is a statutory tenant it is now settled law, following the decision in *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.*,[2] that the landlord need not determine the statutory tenancy by a month's notice to quit before commencing proceedings for an order for possession against him.

The notice under section 28(b) is applicable to cases where the statutory tenant wants to determine his tenancy by notice to the landlord.

In our present case on the determination of the first defendant's tenancy on 28th February, 1967 by the plaintiff, the rights of the second, third and fourth defendants for possession of any part of the said premises as against the plaintiff were automatically determined at common law and their only rights to remain in possession arise under the provisions of sub-section (1) of section 26 of the said Ordinance. Now these rights to possession as I have indicated above are exactly the same as those of a statutory tenant. Hence the status of the second, third and fourth defendants are analagous to that of a statutory tenant. They are however not statutory tenants as the relationship has not been established whereby they are obliged to pay the landlord rent.

In my view, in these cases too just as in the case of a statutory tenant, the landlord can commence proceedings for possession without giving them any further notice to terminate their "tenancy".

In passing I would like to add with respect that *Guan Seng Kee's case* [1] is not authority for the proposition that "at the end of the expiry of a notice to quit by the landlord to the chief tenant, a sub-tenant lawfully remaining in occupation becomes a statutory tenant, holding as a tenant from the landlord and enjoying the protection of the said Ordinance" but only for the proposition that such a sub-tenant's possession of the premises would be subject to the protective provisions of the said Ordinance.

In the result the appeal will be allowed with costs as against the third and fourth defendants and there shall be orders for possession in favour of the plaintiff/appellant as against the third and fourth defendants/respondents. The appellant has indicated that it is not seeking a similar order against the second defendant/respondent as it has already given up possession of the premises.

Appeal allowed.

Solicitors: *J. B. Jeyaretnam; R. C. H. Lim & Co.; Legal Aid Bureau.*